



Comptroller General
of the United States

Washington, D.C. 20548

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Linda Lebowitz

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Decision

Matter of: Gair's Medical Transcription Services

File: B-257426

Date: October 4, 1994

Betty J. Gair for the protester,
William E. Thomas, Esq., Department of Veterans Affairs, for
the agency.
Linda S. Lebowitz, Esq., and Michael R. Golden, Esq., Office
of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

Awardee's bid was reasonably and properly considered for
award where the bid was received by the contracting officer
5 days prior to bid opening, at which time the contracting
officer placed the bid in a safe which was exclusively
within the agency's custody and control, and that solely as
a result of government mishandling after receipt of the bid,
specifically, the contracting officer's failure to remove
the bid from the safe just prior to bid opening, the bid was
not opened by the contracting officer at the public bid
opening.

DECISION

Gair's Medical Transcription Services protests the award of
a contract to York Stenographic Services under invitation
for bids (IFB) No. 595-31-94, issued by the Department of
Veterans Affairs (VA) for transcription services at the VA
Medical Center, Lebanon, Pennsylvania. The protester
essentially complains that the contracting officer
improperly awarded the contract to York whose bid was not
opened by the contracting officer at the public bid opening.

We deny the protest.

The IFB was issued as a total small business set-aside on
March 31, 1994, the IFB contemplated the award of a firm,
fixed-price contract for a base period with four option
periods to the low, responsive, and responsible bidder. As
amended, the IFB scheduled bid opening for 2 p.m. on May 18.

The IFB provided that bids could be either mailed to the contracting officer at a particular address at the VA Medical Center or hand-carried to the depository located in the bid opening room.

The record shows that on May 12, York sent its bid by Federal Express to the contracting officer at the address listed in the IFB. York's bid was placed in a Federal Express envelope which contained a "sealed bid" label correctly showing the IFB number, the date and time of bid opening, and a designation that the bid was for "medical trans"--thereby connoting medical transcription services. York's bid package was delivered to the mailroom at the VA Medical Center at 10:02 a.m. on May 13, 5 days prior to bid opening. Later in the morning, the mailroom forwarded York's bid package to the contracting officer.

According to the contracting officer, because of the thickness of York's bid package, he was unable to time/date stamp the package to evidence its receipt. Instead, he wrote on the outside of the bid package that he received the package at 11:05 a.m. on May 13. In accordance with usual VA procedures that bid packages are to be placed in a safe and held there until just prior to bid opening, the contracting officer placed York's bid package in a safe located in a room next to the bid opening room. The contracting officer also placed in the safe a bid package from another firm, COMMASSIST, which he received at 11:05 a.m. on May 13, as evidenced by his hand-written note on the package.

Just prior to the bid opening time on May 18, the contracting officer removed from the safe what he believed to be all bid packages submitted in response to the IFB, including packages from the protester and four other firms. The contracting officer did not see, and therefore did not remove, the bid packages submitted by York and COMMASSIST. At bid opening, the contracting officer opened five bids. Bid prices were recorded on the bid abstract.

According to the contracting officer and the contract specialist, approximately 1 hour after bid opening, the president of COMMASSIST called and asked the contracting officer about the bid results. The contracting officer advised that he had not opened a bid from that firm. The president of COMMASSIST explained that the firm submitted a bid package a number of days prior to bid opening. At this point, the contracting officer checked the safe and discovered the bid packages submitted by York and COMMASSIST. These two bid packages had been covered in the safe by bid packages and product samples for another procurement.

Since the contracting officer's hand-written dates and times of receipt of the bid packages from York and COMMASSIST were 11:05 a.m. on May 13, he determined that both bids were timely received by the agency 5 days prior to bid opening. The contracting officer also determined that the bids of York and COMMASSIST could not have been altered since they had remained in a safe which was exclusively within the custody and control of the agency since May 13. Accordingly, the contracting officer concluded that the failure of these bid packages to reach the bid opening room by the time of bid opening on May 18 was solely due to government mishandling, specifically, his failure to remove the bid packages from the safe just prior to bid opening. Therefore, in the presence of the contract specialist, the contracting officer opened these two bids. These additional bid prices were recorded on the bid abstract.

Of the seven firms timely submitting bids, York was the apparent low bidder and the protester was the apparent second-low bidder. On May 23, the contracting officer awarded a contract to York, the low, responsive, and responsible bidder.

The protester, which does not dispute that York's bid was mishandled by the government, basically objects to the award to York because its bid was not opened by the contracting officer at the public bid opening. As a result, the protester believes the IFB should be canceled and the requirement resolicited in order to ensure that the integrity of the competitive bid system is not compromised.¹

Bidders generally are responsible for delivering their bids to the proper place at the proper time, and late delivery of a bid requires its rejection. United Teleplex, B-237160.2, Feb. 2, 1990, 90-1 CPD ¶ 146. A late hand-carried bid may

¹The protester also alleges that York may not be a small business. We point out that the Small Business Act, 15 U.S.C. § 637(b) (6) (1988), gives the Small Business Administration (SBA), not our Office, the conclusive authority to determine matters of small business size status for federal procurements. Bid Protest Regulations, 4 C.F.R. § 21.3(m) (2) (1994); Survive Eng'g Co., B-235958, July 20, 1989, 89-2 CPD ¶ 71. Thus, we will not review a protester's challenge to another company's size status, nor will we review a decision by the SBA that a company is, or is not, a small business for purposes of conducting federal procurements. Id.

be considered for award, however, where improper government action was the paramount cause of its late delivery and consideration of the late bid would not compromise the integrity of the competitive bid system, Watson Agency, Inc., B-241072; Dec. 19, 1990, 90-2 CPD ¶ 506. This exception to the late-bid rule can only be invoked where there is affirmative government action that makes timely delivery of the hand-carried bid to the location identified in the solicitation for receipt of bids impossible, and the bidder acted reasonably in fulfilling its responsibility to ensure timely delivery and did not significantly contribute to the lateness. Pearl Properties, B-249519, Nov. 9, 1992, 92-2 CPD ¶ 333.

Here, we believe the contracting officer reasonably and properly considered York's bid for award. In this regard, the record shows that 6 days prior to bid opening, York sent its bid by Federal Express to the contracting officer at the address listed in the IFB. On the Federal Express envelope which contained York's bid, there was a "sealed bid" label correctly showing the IFB number, the date and time of bid opening, and a designation indicating that the bid was for medical transcription services. York's bid package, delivered by Federal Express to the mailroom at the VA Medical Center 5 days prior to bid opening, subsequently was forwarded by the mailroom to the contracting officer on the same day. At this time, the contracting officer wrote on York's bid package that he received the package at 11:05 a.m. on May 13, and in accordance with usual procedures, placed this package in a safe which was exclusively within the agency's custody and control. The contracting officer states, and the protester does not dispute, that but for government mishandling, specifically, the contracting officer's failure to timely remove York's bid from the safe, York's bid would have been opened by the contracting officer at the public bid opening on May 18, 5 days after York's bid was received and placed in the safe by the contracting officer.

Contrary to the protester's suggestion, it is clear that the integrity of the competitive bid system was not compromised by the contracting officer's consideration of York's bid for award. Since it is undisputed that York's bid was held in a safe which was exclusively within the agency's custody and control for 5 days prior to bid opening, there is no reasonable possibility that York's bid could have been altered after bid opening. Id. Further, we point out that there is no requirement that bids mishandled by the

government be opened in a public forum. Accordingly, we have no basis to question the award to York as the low, responsive, and responsible bidder.

The protest is denied.

for James A. Spangenberg
Robert P. Murphy
Acting General Counsel